

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

A SPECIAL ORDER BY CONSENT ISSUED TO

**The Pittsylvania County School Board
FOR**

**Mount Airy Elementary – Permit No. VA0027707
Union Hall Elementary – Permit No. VA0027715
Tunstall High School – Permit No. VA0027693**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and the Pittsylvania County School Board, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizen board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "School Board" means the Pittsylvania County School Board, owner of the wastewater treatment plants at Mount Airy Elementary, Union Hall Elementary, and Tunstall High School.
7. "Facilities" means the wastewater treatment plants at Mount Airy Elementary, Union Hall Elementary, and Tunstall High School.
8. "SCRO" means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
9. "WCRO" means the West Central Regional Office of the DEQ, located in Roanoke, Virginia.
10. "VPDES" means the Virginia Pollution Discharge Elimination System.
11. "Permits" means VPDES Permit numbers VA0027707 issued to Mount Airy Elementary on May 25, 1998 and expires on May 25, 2003; VA0027715 issued to Union Hall Elementary on May 25, 1998 and expires on May 25, 2003; and VA0027693 issued to Tunstall High School on August 4, 1998 and expires on August 4, 2003.
12. "DMR" means Discharge Monitoring Report.
13. "NOV" means Notice of Violation.
14. "SEP" means Supplemental Environmental Project as defined at Va. Code § 10.1-1186.2.A.

SECTION C: Findings of Facts and Conclusions of Law

1. On September 29, 1998, the School Board signed a Letter of Agreement ("LOA") with the WCRO of the DEQ to resolve certain operating, monitoring, and reporting issues with the Facilities.
2. The LOA was terminated by the WCRO of the DEQ on May 22, 2001.
3. On October 22, 2001, the School Board was issued NOVs numbers 01-10-SCRO-006, 007, and 008 to the Facilities for late submissions of DMRs for the month of May 2001, and failure to submit DMRs for the months of June, July, and August 2001.

4. On February 7, 2002, the School Board was issued NOV's numbers W2002-01-L-0002, 0003, and 0005 to the Facilities for failure to report Flow and Total Suspended Solids parameters; effluent limits violations of Ammonia, Chlorine Contact, and Instantaneous Chlorine; improper operation and maintenance as found in an inspection of the Facilities by the DEQ on December 12, 2001; failure to contact the DEQ after receiving the October 22, 2001 NOV; failure to provide records to the DEQ within a reasonable time in order to determine compliance with the Permits; and failure to submit an Operations and Maintenance Manual approved by the Virginia Department of Health in accordance with the Permits.
5. On February 12, 2002, the School Board submitted to the DEQ the unreported DMRs cited in the October 22, 2001 NOV.
6. On March 18, 2002, the DEQ received verification that a revised Operations and Maintenance Manual was received by the Virginia Department of Health.
7. On March 21, 2002, staff from the DEQ met with staff from the School Board in which the DEQ gave an overview of the regulatory program requirements.
8. On March 28, 2002, the Facility at Union Hall Elementary was issued NOV number W2002-03-L-0003 for effluent limit violation of Ammonia, and failure of the Operator in Responsible Charge to sign and date the DMR for the month of February 2002.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15(8a) and (8d), orders the School Board to perform the actions contained in Appendix A and B of this Order. In addition, the Board orders, and the School Board consents, to pay a civil charge of \$4,060.00 in settlement of the violations cited in this Order.

1. \$1,015.00 of this civil charge shall be paid within 30 days of the effective

date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include the Federal ID number for the School Board and shall state that it is being tendered in payment of the civil charge assessed under this Order.

2. \$3,045.00 of the civil charge shall be satisfied upon completion of a SEP pursuant to Va. Code § 10.1-1186.2 and as described in Appendix B of this Order.
3. The Department has the sole discretion to:
 - a. authorize any alternate SEP proposed by the School Board; and
 - b. determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
4. Should the Department determine that the SEP, or alternate SEP, has not been completed in a satisfactory manner, the Department shall notify the School Board of such determination in writing. Within 30 days of notification, the School Board shall pay the amount specified in Paragraph 2 of Section D, and in accordance with the procedures specified in Paragraph 1 of Section D.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the School Board, for good cause shown by the School Board, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves the matters specifically discussed herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or

subsequently discovered violations; (2) seeking subsequent remediation of the Facilities as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order.

3. For purposes of this Order, and subsequent actions with respect to this Order, the School Board admits to the jurisdictional allegations contained herein.
4. The School Board consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The School Board declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law, and waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by the School Board to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The School Board shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The School Board must show that such circumstances resulting in noncompliance were beyond their control and not due to a lack of good faith or diligence on their part. The School Board shall notify the DEQ Regional Director in writing when circumstances are anticipated to

occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition listed above, which the School Board intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the School Board. Notwithstanding the foregoing, the School Board agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Regional Director determines that the School Board has satisfied all requirements of the Order, and that determination is a “case decision” within the meaning of the Virginia Administrative Process Act. The School Board may petition the Director to terminate the Order at such time as the School Board considers the requirements of the Order to be satisfied; or
 - b. The Director or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to the School Board.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve the School Board from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, the School Board consents to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2002

Robert G. Burnley, Director
Department of Environmental Quality

The School Board voluntarily agrees to the issuance of this Order.

Date: _____ By: _____
Jerry E. Webb, Ed.D, Superintendent

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this _____ day
of _____, 2002, by Jerry E. Webb, Ph.D., Superintendent of
Pittsylvania Schools.

Notary Public

My commission expires: _____.

Appendix A

The School Board shall:

1. For all Facilities, operate and maintain the wastewater treatment systems in accordance with the Operation and Maintenance Manual.
2. Compliance with item 1 of Appendix A of this Order shall be determined by an unannounced site inspection of the Facilities within one year of the issuance of this Order.
3. Henceforth comply with all Department and VPDES Permit reporting requirements.
4. Unless otherwise specified in this Order, or in the Permit, all correspondence related to this Order shall be sent to:

Harry F. Waggoner
Virginia Department of Environmental Quality
South Central Regional Office
7705 Timberlake Road
Lynchburg, Virginia 24502

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APPENDIX B

1. The SEP to be performed by the School Board is to have the operators for the Facilities satisfactorily complete the Virginia Polytechnic Wastewater Treatment Plant Operators Short Course. The SEP shall be completed by September 2003.
2. The School Board certifies that they have not commenced performance of the SEP prior to the identification of the violations cited in this Consent Order and the approval of the SEP by the Department.
3. The net cost of the SEP to the School Board shall not be less than \$3,045.00. In the event that the final net cost of the SEP is less than this amount, the School Board shall pay the remainder of the amount in accordance with Paragraph 1, Section D, of this Order to the Commonwealth of Virginia. Net costs shall mean the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.
4. The School Board acknowledges that it is solely responsible for completion of the SEP project. Any transfer of funds, tasks, or otherwise by the School Board to a third party, shall not relieve the School Board of its responsibility to complete the SEP as contained in this Order.
5. The School Board shall provide the Department with written verification of completion of the SEP by providing copies of certificates of completion. The SEP completion verification must be submitted to the Department within 30 days of receiving certificates of completion.
6. The School Board shall submit written verification to the Department in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation of the final overall and net cost of the SEP within 30 days of the SEP completion date. For the purposes of satisfying this requirement, net costs shall be the actual final net costs of the SEP, and shall be accompanied by a CPA certification or certification from the Chief Financial Officer of the School Board.
7. In the event that the School Board publicizes the SEP, or the results of the SEP, The School Board shall state in a prominent manner that the project is part of a settlement for an enforcement action.
8. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Harry F. Waggoner
Virginia Department of Environmental Quality
South Central Regional Office
7705 Timberlake Road
Lynchburg, Virginia 24502

